

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION**

KENYATTA EDMOND #400184

CASE NO. 6:18-CV-01095 SEC P

VERSUS

UNASSIGNED DISTRICT JUDGE

POLICE DEPT OF LAFAYETTE

MAGISTRATE JUDGE WHITEHURST ET AL

ORDER

Before the Court is a Report and Recommendation of the Magistrate Judge. [Record Document 9]. Plaintiff has filed objections. [Record Document 10]. For the reasons given below, the Report and Recommendation is **ADOPTED IN PART** and **REJECTED IN PART**. It is **ADOPTED** as to Plaintiff's claims for compensatory damages, but **REJECTED** as to any claims for nominative or punitive damages and as to the issue of the statute of limitations.

In his complaint, Plaintiff alleged that he was falsely arrested in August 2016 and on October 13, 2016. [Record Document 1 at 6]. Because Plaintiff did not file his complaint until August 22, 2018, the Magistrate Judge found that the one-year statute of limitations applicable to Plaintiff's claims had run. [Record Document 9 at 5]. In his objections, Plaintiff alleges that the arrests occurred in 2017, not 2016. [Record Document 10 at 1]. Given these dates, Plaintiff's claims related to the October 13, 2017 arrest are not time barred. Because Plaintiff has not provided the precise date of his August 2017 arrest, the Court cannot determine whether claims related to that arrest are time barred. Therefore, the Court **REJECTS** the Magistrate Judge's Report and Recommendation as it relates to the statute of limitations.

The Magistrate Judge also recommends that Plaintiff's claims for emotional distress damages be dismissed because he has not alleged any physical injury. [Record Document 9 at 5]. Although 42 U.S.C. § 1997e(e) prohibits a prisoner from obtaining damages "for mental or

emotional injury suffered while in custody without a prior showing of physical injury,” this provision only applies to compensatory damages. *Hutchins v. McDaniels*, 512 F.3d 193, 198 (5th Cir. 2007). A prisoner may, however, recover nominative or punitive damages even in the absence of physical injury. *Id.* Because Plaintiff has not alleged any physical injury, the Court **ADOPTS** the Magistrate Judge’s Report and Recommendation to the extent that it recommends dismissal of claims for compensatory damages, but **REJECTS** the Report and Recommendation to the extent that it purports to apply to claims for punitive or nominative damages.

IT IS ORDERED that Plaintiff’s claims for compensatory damages arising from his arrests are **DISMISSED WITH PREJUDICE** as frivolous and for failing to state a claim on which relief can be granted pursuant to the provisions of 28 U.S.C. § 1915(e)(2).

IT IS FURTHER ORDERED that Plaintiff is granted until **December 31, 2018** to amend his complaint to incorporate the correct year of his arrests and to allege the precise date of his August 2017 arrest so that the Court may determine whether claims related to that arrest have prescribed.

THUS DONE AND SIGNED in Shreveport, Louisiana, this 31 day of December, 2018.



ELIZABETH ERNY FOOTE
UNITED STATES DISTRICT JUDGE